1:Barnes E-5 (1946-1949)1954 FR5 Ngoni FR5
Mpezeni

rule as a Native Authority Order.[36] Thus the chiefs preferred to appear as legislators enforcing their own laws rather than as the judicial agents of the Administration.

Besides the Administration, other groups external to the indigenous system endeavour to influence the action of the courts. Thus missions work through chiefs to try to prevent the granting of divorces in the courts, traders endeavour to get their disputes with Africans heard in Native Courts rather than in those of the Administration, and farmers request courts to hear promptly cases which concern their employees.

Occasionally the Ngoni chiefs meet together with their people and formally make a new law. This appears to have happened about once in each decade. Yet in the courts new decisions are constantly being taken since the circumstances in which disputes arise are continually altering. The way in which these decisions are imposed throws light on the position of the court within the county, for many of these new decisions, precedents as we would call them, are introduced under the guise of a revival of some good but lately neglected tribal custom. There is no recorded corpus of Native law and custom which the Native Courts are empowered to enforce and, therefore, to say that a new decision is merely a revival of an established usage satisfies the requirements of the Administration, provided the usage is not 'repugnant to natural justice and morality'. On the other hand, it enables the court members to legislate without referring the matter to a meeting of the whole tribe or county, at which anyone would be free to speak his mind. Thus the group of persons who are in power in the court further entrench their position.[37]

9. *Moral and physical sanctions*

The counties and the tribe persist as social groups despite the ease with which their members may move away to other surroundings. The Native Authority remains in power, and its courts are full of litigants, despite the unequal distribution of privileges and rewards. In a general sense the system works because there are moral as well as physical sanctions behind the rulings of the court. There is general agreement about the rights and wrongs of the actions with which the courts have to deal, and it is this that in the end usually makes a man pay damages and fines that have been awarded against him rather than the threat of the Administration's force behind the court. The decisions of the courts are subject to

[36] *African Affairs*, report, 1948, p. 47.
[37] For a further analysis of this legislative process, see my paper, 'History'.